## REMARKS

### I. Status of the Application

The Claims are under Final Rejection. This Amendment is being filed with a Request for Continuing Examination (RCE).

Claims 1-4 and 7-38 are pending. Claims 1-4, 7-10 and 12-15 are being amended. Claims 16-38 are new.

### II. The Amendments

The specification has been amended to correct typographical errors.

Claims 1, 2, 9, 13, 14 and 15 have been amended to delete references to the term "the steps of".

Claim 7 has been amended to change the dependency from claim 5, which had been cancelled in an earlier Amendment filed on February 28, 2002 and refiled on October 2, 2002. Claim 8 has been similarly amended to change the dependency from claim 6, which had also been cancelled in the earlier Amendment, to claim 1.

Claim 10 has been amended to be consistent with the terminology of Claim 9, as amended in the Amendment refiled on October 2, 2002.

Claim 12 has been amended for clarity and to provide consistent claim language. Claim 14 has been amended to correct a typographical error. Limitation b) of Claim 15 has been amended to be consistent with limitation a).

These amendments are not being made for the purposes of patentability and do not limit the scope of the claims.

## III. Claim Rejections - 35 U.S.C. § 112

Claims 1-4, 9-11, 13 and 14 have been rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite.

Claims 1-4, 13 and 14 have been rejected because the "first price" in claim 1 and the "first price" and the "fourth price" in claims 13 and 14 are not referred to later in the claims. As the Examiner noted on page 7 of the Office Action dated November 8, 2002 ("the Office Action"), providing a potential customer a first price for a commodity at a first tier "enables the customer to more comprehensibly assess all of his/her options . . .". Claims 1, 13 and 14 are not, therefore, indefinite.

The Examiner has requested clarification of the meaning of the term "transferring" ownership in claims 3 and 4. Claim 3 recites that ownership of the insurance instrument is not transferred to the customer. Here, a customer may pay the fourth price for the second tier commodity and the insurance instrument, but the seller of the commodity and insurance instrument retains ownership of the insurance instrument, for the benefit of the customer. If the seller cannot provide the second tiered commodity to the customer, the seller may purchase the commodity from another supplier (typically for a higher price than the price the second-tier was sold to the customer) and be reimbursed for the additional cost through the insurance company.

If ownership is transferred to the customer, as recited in claim 4, if the seller cannot supply the commodity, the customer may purchase the commodity from another supplier or the original seller (at a different tier) at a higher price and collect on the insurance instrument for the additional cost of purchasing and delivering the commodity.

The Examiner has questioned the meaning of the limitation (d) of claim 9. Limitation (d) and limitation (c) appear below:

c. selling said tier-priced commodity to said customer; and

d. transferring to said customer the right to receive insurance indemnification against loss due to the at least one associated risk if said commodity sold to said customer is from said second tier.

Limitation (c) does not specify which tier is being purchased, the first tier or the second tier. According to limitation (d) "*if* said commodity sold to said customer *is from said second tier*" then "the right to receive insurance indemnification against loss due to the at least one associated risk" associated with the second tier is transferred. (emphasis added) It is therefore clear that the right to receive insurance indemnification is transferred if the commodity sold in limitation (c) is from the second tier. It is respectfully submitted that claim 9 and the claims dependent upon it meet the requirements of 35 U.S.C. § 112, second paragraph.

Withdrawal of the rejections and reconsideration of the claims are respectively requested.

**IV. Claim Rejections - 35 U.S.C. § 103**

Claims 1-15 have been rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Cigna's PowerBacker(sm) Product, as described in five references ("the PowerBacker(sm) references") included with the Office Action. All comments concerning the PowerBacker(sm) product are based exclusively on the descriptions in these five references.

The PowerBacker(sm) Product is a standalone insurance product that "insures energy transactions against the risk of price fluctuations in the open market." (¶ 2, Cigna Property & Casualty Launches New Cigna Power Products Unit). A commodity is not sold in conjunction with the Power Backer(sm) Product. Therefore, none of the PowerBacker(sm) references show or suggest a method for managing the sale of a *tier-priced commodity*, as claimed.

In addition, the PowerBacker(sm) references do not show or suggest "offering said commodity at said second tier for sale at a fourth price, wherein said fourth price is a function of

at least said second price and said third price", as in limitation d) of claim 1. The second price (price of second tier commodity) is determined in limitation b) and the third price (price of insurance instrument) is determined in limitation c) of claim 1. As discussed above, the PowerBacker(sm) Product is a standalone insurance product. The PowerBacker(sm) references do not show or suggest the direct sale of any commodities or the price such commodities are sold at, as claimed. They do not, therefore, show or suggest offering a commodity at said second tier price for sale, in general, or for sale at the fourth price as defined by claim 1.

The Examiner asserted that the "fourth price" is the "total cost of the commodity *per se* plus insurance purchased to cover any loss associated with the commodity. . . ." The "price" a commodity is sold at and the "cost" of a commodity and insurance to a purchaser are not necessarily the same, however. According to claim 1, the second tier commodity is offered for sale at the fourth price, that is a function of at least the first price and the second price. In the PowerBacker(sm) references, in contrast, a purchaser of a commodity would pay a first price for the commodity from one party (i.e., a commodity seller) and a second price for the insurance from another party (i.e., an insurance company). The total "cost" may be a sum of the first and second price, but the commodity *is not offered for sale* by any party for a single "price" that is a function of the prices of both the commodity at the second tier and the insurance product, as claimed. In other words, as explained above, in the PowerBacker(sm) references, a commodity at a second tier is not offered for sale at the fourth price, as claimed. Only an insurance product is offered for sale and sold. Furthermore, there is no teaching or suggestion in the prior cited by the Examiner to offer a commodity for sale at the fourth price defined by claim 1. Claim 1 and the claims dependent upon it are not, therefore, obvious in light of the PowerBacker(sm)references or the other references cited by the Examiner.

Claim 2 has been rejected in light of Cigna Property & Casualty, ¶ 8, and New Line ¶ 6. Claim 2 is dependent on claim 1 and is allowable because claim 1 is allowable, as discussed above. Furthermore, claim 2 requires receiving a request from a customer to buy the commodity at the fourth price and selling the commodity. As discussed above, the PowerBacker(sm) Product is an insurance product. It does not encompass the sale of a commodity, as claimed. Claim 2 is not, therefore, obvious in light of the PowerBacker(sm) Product.

Claims 9-12 have been rejected in light of the PowerBacker(sm) references, as well. The Examiner acknowledges that the PowerBacker(sm) Product is not disclosed in a computer-implemented embodiment, but Official Notice is taken that it is well-known in the art of energy sales and insurance to conduct a purchase of energy as well as insurance online, via a computer network.

As discussed above, the PowerBacker(sm) Product does not involve the sale of commodities. While the Examiner has asserted that it is well known to conduct energy sales on-line and that it is well known to conduct insurance sales on line, the Examiner has not identified a teaching or suggestion to sell a commodity and an insurance product for risks associated with the commodity, together on-line, as claimed. It would not have been obvious to one skilled in the art of energy sales to couple the sale of insurance with the sale of energy on a computer network, nor would it have been obvious to one skilled in the art of insurance to bundle the sale of energy with the sale of insurance, as claimed. It is respectfully submitted that the Examiner is using hindsight to reconstruct the claimed invention.

Claims 13-15 have been rejected in light of the PowerBacker(sm) references and Official Notice that it is old and well known in both energy and insurance to provide customers with various prices from competing companies and to submit competitive bids.

As discussed above, it would not have been obvious to one of ordinary skill in the art of energy sales or to one of ordinary skill in the art of insurance, to bundle the sale of commodities with the sale of insurance against risks associated with a commodity, and offer the bundled products for sale, as claimed.

Withdrawal of the rejections and reconsideration of the claims are respectfully requested.

**V. The New Claims**

New claims 16 and 17, which are dependent on claim 1, recite limitations that had been removed from claim 1 in the Amendment refiled October 2, 2002. New claim 18, which is also dependent on claim 1, recites that the tiered-priced commodity is telecommunications bandwidth or natural gas, as described on page 4, line 21 and page 10, lines 9-10 of the specification. No new matter has been added. Claims 16-18 should be allowable because claim 1 is allowable, as discussed above.

New claim 19, which is dependent on claim 15, recites that the second price is different than the first price. Prices may be different for each bidder because the risks may be different (due to a geographical location of each bidder, for example). This claim is supported on page 13, line 16, where it is stated that bids are personalized for each bidder. The Examiner has not identified a teaching or suggestion to conduct an auction as defined in claim 19, where customers may bid against each other on a commodity and insurance instrument, offered for different prices to each customer. The commodity is sold to the bidder that exceeds their respective offer price by the greatest amount.

New independent claim 20 and claims 21-27, which are dependent on claim 18, define a method of selling a tier-priced commodity comprising offering for a sale a *bundled product* comprising a commodity at a second tier *and* an insurance instrument. The insurance instrument indemnifies against at least one risk associated with purchasing the commodity at the second tier.

Sale of a "bundled" product is discussed, for example, at page 7, lines 20-21 of the specification. The methods of claims 20-27 are not taught or suggested by the prior art cited by the Examiner because the cited PowerBacker(sm) references only describe the sale of standalone insurance products, not the sale of commodities, as discussed above. There is no teaching or suggestion in the PowerBacker(sm) references or the other references cited by the Examiner to bundle a commodity with an insurance product indemnifying against a risk associated with the commodity, as claimed.

New independent claim 28 and claims 29-31, which are dependent on Claim 25, disclose a method for managing a sale of a tier-priced commodity over a network, including offering for sale a *bundled product* comprising a commodity at a second tier having an associated risk and an insurance instrument indemnifying against that risk. Such a network is shown in Fig. 5a, for example. The PowerBacker(sm) references do not show or suggest sale of such a bundled product over a network, as described above.

New independent claim 32 defines a system for managing the sale of a tier-priced commodity, comprising a computer programmed to compute a price for a *bundled product* comprising a commodity at a tier with an associated risk and insurance indemnifying the risk. New claim 33, which is dependent on claim 31, recites that the computer is further programmed to offer the bundled product for sale at the computed price over a network. Such a system is shown in Fig. 5a, for example. As discussed above, neither the PowerBacker(sm) references nor the other references cited by the Examiner teach computing such a price for a bundled product or offering such a bundled product for sale, as claimed.

New independent claim 34, defines a method for managing the sale of a tier-priced commodity, comprising displaying to a customer the lowest of a price of a commodity at a first

tier and a price for a *bundled product* comprising the commodity at the second tier and an insurance product, from a first source, and the price of the commodity at the first tier and a bundled product, from a second tier. Such a method is shown in Fig. 6, for example. As discussed above, neither the PowerBacker(sm) references nor the other references cited by the Examiner teach computing such a price for a bundled product or offering such a bundled product for sale, as claimed.

New independent claim 35 defines a method for managing the sale of a tier-priced commodity, including a bundled product (as described above), for sale to multiple customers. Such a method is described on page 13, line 20-page 14, line 8. As discussed above, neither the PowerBacker(sm) references nor the other references cited by the Examiner teach computing such a price for a bundled product or offering such a bundled product for sale, as claimed.

New independent claim 36 defines a method of managing the sale of a tier-priced commodity, including bidding on *bundled products* and selling the bundled product to the highest bidder. On-line auctioning of the bundled product is described on page 13, lines 11-19. As discussed above, neither the PowerBacker(sm) references nor the other references cited by the Examiner teach computing such a price for a bundled product or offering such a bundled product for sale, as claimed. Furthermore, none of the cited references teach or suggest auctioning such a bundled product, as claimed. New claim 37, dependent on claim 36, recites that the first price and the second price are different. As discussed above with respect to new Claim 19, the Examiner has not identified a teaching or suggestion in the cited references to conduct an auction of bundled products having different prices for different customers. Claim 38, dependent on claim 37, recites that the first price and the second price are the same.

## VI. Conclusion

Allowance of the application in light of these Amendments and Remarks are respectfully requested.

Respectfully submitted,

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## Marked Up Version of the Amendments

**In the Specification**

The paragraph on page 3, lines 12-22, is being amended as follows:

-- One method of dealing with the risk interruptions would be to set aside, hopefully in some type of profitable investment, an amount of money equivalent to the estimated costs of purchasing spot power for the predicted interruptions. While a possible solution, this method would be difficult for the average utility customer to implement because of the lack of available information and skill with determining the frequency of interruptions. Another option, if available, would be to purchase interruptible power during the time of year when interruptions are unlikely and [by] buy firm power when interruptions are likely to occur. While better than purchasing nothing but interruptible power, this method does not provide the same savings as it is possible to realize using a larger percentage of interruptible power and it is still possible to be surprised by interruptions requiring the customer to buy spot power. --

The paragraph on page 4, lines 1-12, is being amended as follows:

-- What is needed is a system that allows the customer to buy less expensive interruptible power from the least expensive power generating utility or broker and avoid the risk of loss of power. A method which combined the sale of interruptible power with a financial instrument designed to indemnify against loss resulting from foreseeable interruptions would achieve this goal. A system which allows the customer to purchase or contract with a power broker/utility via a computer connected to the Internet or similar network would also be highly desirable. It would also be advantageous if the system allowed the customer to compare purchase prices from several different providers in order to provide the customer with the best possible price. It would also be advantageous if the system allowed the customers to bid on

available utility resources rather than paying a fixed rate, thereby allowing customers to realize a savings and utilities to efficiently sell off unused capacity. --

The paragraph on page 10, line 17 - page 11, line 6, is being amended as follows:

-- The implementation of the present invention from the generating utility and end-user may be accomplished via traditional business means (typically written agreements) or via a computerized transaction. If the transaction is carried out over a computer network (via the Internet in the preferred embodiment), a wholesale or retail customer would be able to purchase the utility commodity from the provider either with or without an attached financial instrument. The purchaser would also be able to purchase the commodity from one provider and the financial instrument from a separate financial broker. Sales by a utility may be conditioned upon the purchase of an insurance policy by the purchaser. In another embodiment, an alternative energy provider may sell hedge contracts supported by its own power generating surplus[ ]. In yet another embodiment, purchasers bid on available power and financial instrument from a variety of different providers. --

The paragraph on page 11, lines 7-22, is being amended as follows:

-- Fig. 4 illustrates the method steps of the present invention as they would be carried out through traditional processes or as implemented in software on one or more computers. At step **32** a price is determined for the commodity at a first tier. In the preferred embodiment, this will be the price for firm electrical power in a particular class (residential, industrial, etc.) which will be the most expensive electrical power available in that class. At step **34** the price for the commodity at a second tier within the same class <u>is determined</u>. In the preferred embodiment, this will be interruptible power in the same class available for a substantially lower price than the power in the first tier. The price determinations made in steps

**32** and **34** are accomplished using any of a number of well known techniques. One source of information useful in determining these prices is Federal Energy Regulatory Commission (FERC) Open-Access Same-time Information System (OASIS) provides information about available transmission capacity. At step **36** a price is determined for a financial instrument to cover the loss which would be suffered in the event of a foreseeable interruption in service associated with the purchase of the second tier commodity. Typically the financial instrument is designed to cover the potential foreseeable interruptions and not force majeure events. --

The paragraph on page 13, line 20 - page 14, line 8, is being amended as follows:

-- Fig. 8 shows customer computer **78** connecting to commodity seller computers **82**, **84**, and **86** via a network, such as the Internet **80**. The customer computer **78** presents the commodity seller computers **82**, **84**, and **86** with its commodity requirements and information necessary to determine the cost of the requested commodity and the associated financial instrument. In an alternate embodiment, the customer computer **78** connects to a querying computer, which collects information from the customer, retrieves the price combinations from the commodity seller computers **82**, **84**, and **86** and returns the best offer price to the customer. In yet another embodiment the querying computer contacts both commodity seller computers **82**, **84**, and **86** and financial instrument selling computers and presents the customer with the best combined price. --

**In the Claims**

Claims 1-4, 7-10 and 12-15 are being amended as follows:

5. (Twice Amended) A method for managing the sale of a tier-priced commodity comprising [the steps of]:

   a. determining a first price for a commodity at a first tier;

   b. determining a second price for said commodity at a second tier;

c. determining a third price for an insurance instrument designed to indemnify against at least one risk associated with purchasing said commodity at said second tier; and

d. offering said commodity at said second tier for sale at a fourth price[;], wherein said fourth price is a function of at least said second price and said third price.

6. (Amended) The method of claim 1 further [comprises the steps of] comprising receiving a request from a customer to purchase said commodity at said fourth price and selling said customer said commodity.

7. (Amended) The method of claim 2, wherein ownership of said instrument is not transferred to said customer.

8. (Amended) The method of claim 2, wherein ownership of said insurance instrument is transferred to said customer.

7. (Amended) The method of claim [5] 2, wherein said tier-priced commodity is electrical power.

8. (Amended) The method of claim [6] 1, wherein said tier-priced commodity is electrical power.

9. (Twice Amended) A method for managing the sale of a tier-priced commodity over a computer network comprising [the steps of]:

a. displaying to a customer on a display associated with a customer computer a price for a tier-priced commodity[;], wherein said commodity has at least a first tier and a second tier in its pricing structure[; wherein] and said second tier has at least one associated risk;

b. receiving a request to purchase said tier-priced commodity on a seller computer connected to said buyer computer via a computer network;

c. selling said tier-priced commodity to said customer; and

d. transferring to said customer the right to receive insurance indemnification against loss due to the at least one associated risk if said commodity sold to said customer is from said second tier.

10. (Twice Amended) The method of claim 9, wherein said indemnification is an insurance instrument [is] designed to protect against loss associated with interruptions in the delivery of said second tier commodity.

12. (Twice Amended) A system for managing the sale of a tier-priced commodity over a computer network, the system comprising:

a. a first computer;

b. a second computer connected to said first computer by a computer network;

c. commodity data storage accessible to said second computer comprising at least one tier-priced commodity having at least a first tier and a second tier; and

d. insurance instrument data storage accessible to said second computer comprising at least one [financial] <u>insurance</u> instrument designed to indemnify against at least one risk associated with purchasing said commodity from said second tier.

13. (Twice Amended) A method for managing the sale of a tier-priced commodity comprising [the steps of]:

a. determining a first price for a commodity at a first tier from a first source for a customer;

b. determining a second price for said commodity at a second tier from said first source for said customer;

c. determining a third price for a first insurance instrument designed to indemnify said customer against loss resulting from at least one risk associated with purchasing said commodity from said second tier from said first source;

d. determining a fourth price for said commodity at a first tier from a second source for said customer;

e. determining a fifth price for said commodity at a second tier from said second source for said customer.

f. determining a sixth price for a second insurance instrument designed to indemnify said customer against loss resulting from at least one risk associated with purchasing said commodity from said second tier from said second source; and

g. displaying to said customer the lowest of said first price, the sum of said second price and said third price, said fourth price and the sum of said fifth price and said sixth price.

14. (Twice Amended) A method for managing the sale of a tier-priced commodity comprising [the steps of]:

a. determining a first price for a commodity at a first tier for a first customer;

b. determining a second price for said commodity at a second tier for said first customer;

c. determining a third price for a first insurance instrument designed to indemnify said first customer against loss resulting from at least one risk associated with purchasing said commodity from said second tier;

d. determining a fourth price for said commodity at a first tier for a second customer;

e. determining a fifth price for said commodity at a second tier for said second customer;

f. determining a sixth price for a second insurance instrument designed to indemnify said second customer against loss resulting from at least one risk associated with purchasing said commodity from said second tier;

g. displaying to said first customer the lowest of said first price[,] <u>and</u> the sum of said second price and said third price; and

h. displaying to said second customer the lowest of said fourth price and the sum of said fifth price and said sixth price.

15. (Twice Amended) A method for managing the sale of a tier-priced commodity comprising [the steps of]:

a. displaying to a first bidder a first price for a commodity and a first insurance instrument designed to indemnify said first bidder against loss associated with at least one risk associated with the purchase of said commodity;

b. displaying to a second bidder a second price for a commodity and a second insurance instrument designed to indemnify said second bidder against loss associated with at least one risk associated with the purchase of said commodity;

c. receiving bids for said commodity from said first bidder and said second bidder; and

d. selling said commodity and transferring a right to collect against said first insurance instrument to said first bidder if said first bidder exceeds said first price by a greater amount than said second bidder exceeds said second price or selling said commodity and transferring a right to collect against said second insurance instrument to said second bidder if said second bidder exceeds said second price by a greater amount than said first bidder exceeds said first price.